

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE

AIR CARGO SHIPPING SERVICES
ANTITRUST LITIGATION

MDL No. 1775

06-MD-1775 (JG) (VVP)

THIS DOCUMENT RELATES TO:
All Actions

DECLARATION OF DAVID BROOKS

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is David Brooks. I have personal knowledge of the information set forth in this declaration and would competently testify to such information if requested to testify.
2. I have worked for American Airlines (“AA”) since 1983, and have been the President of AA Cargo (“AAC”) since 1996.
3. As President of AAC, I am responsible for AAC’s worldwide operations, including customer services and sales.
4. Airfreight is carried in three types of airplanes: freighters, passenger planes, and combination freighter/passenger planes or “combis.” A freighter carries no passengers, only cargo. A passenger plane carries passengers in the top section and baggage and cargo in the lower deck. A “combi” divides the aircraft into a section for passengers and a back section for cargo.
5. During the period January 2000 through December 2006, AAC shipped cargo only in the bellies of passenger aircraft. AAC never shared freighters with another airline, but it did enter into interline agreements with carriers (where AAC sells capacity to some carriers and purchases capacity from others) that might have flown the same cargo on a freighter aircraft.

6. Stand-alone profitability of cargo operations at a passenger airline is difficult to measure because so many costs are shared with the overall airline operation. Most goods can be shipped on a freighter, in a belly of a passenger plane, or in the freighter section of a “combi.” However, cargo on passenger planes has some additional safety and size restrictions. Certain products can be shipped on either type of airplane, but must be declared dangerous goods due to their combustibility, corrosiveness, or radioactivity. These types of goods are more commonly shipped on passenger carriers, because passenger planes have a somewhat more reliable schedule (although direct freighters often have a faster transit time) and these products tend to be more time-sensitive than other airfreight. A few products that are more hazardous such as acid in drums, or cargo with higher levels of radioactivity, can only be shipped in freighters.

7. Products typically shipped by air include perishable goods, goods that could result in business process impairment, goods with a higher risk of theft, goods with a high value-per-kilogram, time-sensitive goods, and goods that require special care, including fish, meat, flowers, and animals. Currency is an example of a high value product that is commonly shipped in the bellies of passenger planes. Human remains are also almost exclusively shipped by air. In other words, air freight generally are high value to weight, time-sensitive, temperature-sensitive or security-sensitive goods.

8. Products typically shipped by ocean include the lowest value goods, such as coal, grains, petroleum, as well as low volume bulky goods. Air freight shipping is five-to-six times more expensive than ocean shipping, so manufacturers could not afford to ship products like pillows by air, because they would lose money. Any goods that can be stockpiled and then shipped in bulk without great urgency are usually shipped by sea – a lower cost shipping option. While shipping goods by air is the most expensive way to ship on a per kilogram basis, shipping

by air might lower the total cost when adjustments are made for storage, insurance, and other factors. Generally, where the product to be shipped is security sensitive, or the shipment is time sensitive, air freight is favored over rail or truck carriage in continental North America.

9. The airfreight market is very large: approximately 20-25% of the value of all goods that are traded internationally are shipped by air.

10. While air freight carriers are hired to ship products over particular segments or lanes, the airfreight market is worldwide. Direct and indirect flights compete with each other, but a customer expects to pay less for an indirect route, because the service is slower and less reliable.

11. The commercial relationships that air cargo carriers have with their customers (mostly large global freight forwarding companies) span the world. Because their customers ship globally, air freight carriers must compete with airlines that have different strengths in different parts of the world.

12. For the most part, AAC's customers are freight forwarders.

13. Freight forwarders provide a wide array of services, including pick up and delivery, customs brokerage, storage, packaging, preparing crate, pallets, and documentation, and tracking and tracing cargo. Freight forwarders sell a door-to-door product using carriers' airport-to-airport service, acting as an intermediary between a shipper and a carrier.

14. Integrators provide the same service that freight forwarders and carriers provide together, and thus compete against the combination of freight forwarder + carrier. A shipper might use an integrator (often at a higher price point) if it had more urgent, smaller (for example, under fifty (50) pounds), uniformly sized shipments going to less serviced parts of the world.

Freight forwarders prevail over integrators when shipments are different sizes, or when a customer wants to use its own packaging or needs more flexibility.

15. AAC offers the same service as other air freight carriers, soliciting business from freight forwarders, who solicit business from shippers. Airfreight carriers like AAC provide an airport-to-airport solution. In contrast, integrators like UPS and Fedex provide an address-to-address solution. For example, if a production company needs to ship a movie, an integrator would pick up the movie reel at the production studio and deliver it to the movie theatre – for a higher price than shipping on a traditional air freight carrier – which would involve using a courier to pick up and deliver a movie to and from the airport.

16. Pricing for airfreight shipping services includes both rates and surcharges. Surcharges have usually been shown on airway bills as separate items from the rates. Historically, both fuel and security surcharges have been non-negotiable charges added uniformly to the price regardless of the product being shipped.

17. During the period September 2002 through December 2006, AAC's methodology to set fuel surcharges ("FSCs") relied on a published index, which is an average of Kerosene-Type Jet Fuel prices in five (5) major markets around the world. If the cost of fuel on the index moved to a higher or lower level and remained there for more than two (2) weeks, then the FSC will move to the corresponding new amount on the index. AAC implemented changes to the FSC worldwide and the changes usually occurred in increments of 5 cents or its equivalent in local currency.

18. Between January 2000 and December 2006, AAC determined its rates centrally at AAC's Headquarters in Dallas, although they were published by region.

19. However, most customers do not pay the published rates. Most rates paid are based on the amount of business the customer gives to AAC (“Level Rates”). There are two or three levels and, depending on the level of business in the market, AAC will offer the customer the rates for one of those levels, according to the commodity and the destination. Level Rates satisfy the bulk of the market but occasionally a sales person will request a rate that varies from the set levels for a particular customer. In that case, a contract rate will be negotiated by local sales people after approval by the pricing department in Dallas. Contract rates usually last less than six months.

20. The density of the cargo affects the rate. Customers pay more per pound for goods that take up more space but are less heavy. For instance, it costs more per pound to ship pillows than computers. For “fluffy” or less dense shipments, AAC’s rate is based on “dim weight” rather than actual weight which is calculated using a standard pound per-square-foot formula that essentially pretends that a light shipment that takes up significant space on an aircraft is a heavier shipment. A “dim weight” calculation permits AAC to charge a more appropriate amount for the shipment. “Dim weight” is synonymous with the term “chargeable weight.”

21. An imbalance between supply and demand will affect rates. For instance, flying cargo from China to the United States is expensive because of high demand, whereas flying cargo from the United States to China is inexpensive because the demand is low and there is excess capacity. Since 2000, the growth in air cargo demand has typically resulted in a surplus of capacity on one direction in order to fulfill greater trade demand in the other direction.

22. Existing cargo carriers can often enter and exit markets based on market conditions. However, if an entity wanted to start up an entirely new cargo operation, it would

have to make significant investments. There are upfront capital costs, mainly attributable to the purchase of airplanes, but also to leases of hangars and storage space. In addition, a new cargo carrier would have to obtain licenses to fly into the countries served, comply with reporting requirements, and obtain needed landing rights and access to other airport facilities, such as warehouse and aircraft maintenance facilities. There may also be limits on volume and capacity that can be shipped, cost of safety regulations, and others. I recall unsuccessful attempts to enter the market that involved companies without proper infrastructure that purchased old, cheap airplanes and went out of business quickly.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 27, 2011

Fort Worth, Texas



David R. Brooks